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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,238	11/09/2000	Thomas J. Quigley	1075.132000G	4904
75	590 02/08/2005		EXAM	INER
STERNE, KESSLER, GOLDSTEIN & FOX, PLLC			BOAKYE, ALEXANDER O	
1100 New York	Avenue, N.W.			
Suite 600			ART UNIT	PAPER NUMBER
Washington, D	C 20005-3934		2667	

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No. Office Action Summary Axionics Axioni			υX		
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ALEXANDER BOAKYE 2667 - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Eatherises of time may be available under the provisions of 3 CFR 1.136(a). In o event, however, may a raply be timely filed If the period for reply specified shore is less than lifty (20) (says, a reply within the statutory reliminary not thing (20) (days will be considered timely). If the period for reply specified shore is less than lifty (20) (says, a reply with the statutory reliminary not may be a will be considered in reply. If the period for reply specified shore, the maximum statory period vall goals (si) (0) (MCHTs from the mailing date of this communication. Falure to reply within the sact or extended period for reply vill, by datation, cause the application to become ABANDONED (35 U.S.C. § 13.5). The period for reply is specified shore, the mailing date of this communication, even if timely filed, may reduce any extended patent term adjustment. Sea 37 CFR 1.704(b). Status 1) M Responsive to communication(s) filed on 12 November 2004. 2a) This action is FINAL. 2b) M This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-24 is/are pending in the application. 4a) Of the above claim(s)	A.20	09/710,238	QUIGLEY ET AL.		
Provide for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILLING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provides of 37 CFR 1.78(e), in no event, however, may a reply be limitely filled after 50 K(6) MONTHS from the mailting date of this communication. Extensions of time may be available under the provides of 37 CFR 1.78(e), in no event, however, may a reply be limitely filled after 50 K(6) MONTHS from the mailting date of this communication of the provides of the priority documents have been received. Claim(s)	Office Action Summary	Examiner	Art Unit		
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extractions of time may be available under the provisions of 37 CFR 1.13(6), in no event, however, may a reply be limitly filled. - Extractions of time may be available under the provisions of 37 CFR 1.13(6), in no event, however, may a reply be limitly filled. - Extractions of time may be available under the provisions of 37 CFR 1.13(6), in no event, however, may a reply be limitly filled. - Extractions of reply secreted above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the maining date of this communication. - Failur to reply secreted will be substituted in the maximum statutory period will apply and will expire SIX (6) MONTHS from the maining date of this communication. - Failur to reply secreted in the communication of the maximum statutory period will apply and will expire SIX (6) MONTHS from the maining date of this communication. - Failur to reply secreted in the communication of the maximum statutory period will apply and will expire SIX (6) MONTHS from the maining date of this communication, even if films) filled, may reduce any search part of the communication of the					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Ederations of time may be available under the provisions of 37 CFR 1.75(e), in no event, however, may a reply be timely filled after 50 X (f) MCNTHS from the making date of this communication. If the provision of Claim(s)		on appears on the cover sheet wit	h the correspondence address		
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Paper No(s)/Mail Date 6) Other:	3) Information Disclosure Statement(s) (PTO-1449 or PTO/S	SB/08) 5) Notice of Inf	formal Patent Application (PTO-152)		

Art Unit: 2667

1. Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Claims 1-24 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 2-25 of copending Application No. 09/430,821. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Boakye whose telephone number is (571) 272-3183. The examiner can normally be reached on M-F from 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham, can be reached on (571) 272- 3179. The fax number is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-4750.

Alexander Boakye

Patent Examiner

AB 1/31/05

CHI PHAM

SUPERVISORY PATENT EXAMINE:
TECHNOLOGY CENTER 2807 2/4/05